(E2)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2571 of 2004

Petitioner : Ghanaram Tiwari S/o Laxmi Narayan Tiwari, Aged about 58 years, R/o Chainpura Road, P.O & Tahsil Pandariya, Dist : Kabirdham (C.G.)

Versus

Respondents :1. State of Chhattisgarh Through the Collector, Kabirdham, Dist : Kabirdham-(C.G.)

2. The Chief Executive Officer, Pandariya, Janpad Panchayat Office, Pandariya, Dist : Kabirdham-(C.G.)

3. The President, Janpad Panchayat Pandariya, Dist : Kabirdham-(C.G.)

SB : Hon'ble Shri Satish K. Agnihotri, J.

Present: Mr. Anoop Mazumdar, counsel for the petitioner.
Mr. Sushil Dubey, Govt. Advocate for the respondent No. 1/State.
Mr. M.K. Bhaduri and Mr. P.K. Tulsiyan, Advocates for the respondent No. 2.
None appears for respondent No. 3.

ORDER

(Passed on this 13th day of March, 2007)

1. The petitioner was working as Accountant in Janpad Panchayat, Pandariya, District Kabirdham since 1.8.68. The petitioner attained the age of superannuation on 31.12.2003 after completion of 58 years of age.

2. According to learned counsel appearing for the petitioner, the petitioner was granted one year extension of service vide resolution passed in the meeting of General Body of the Gram Panchayat, Pandariya in accordance with the Rule 33 (2) of the Madhya Pradesh

Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (hereinafter referred to as 'the Rules, 1999'). The said resolution was not given effect to by the Chief Executive Officer vide order dated 31.12.2003 (P/2), whereunder the petitioner was retired with effect from 31.12.2003 on attaining the age of 58 years.

3. Learned counsel appearing for the petitioner submits that the Chief Executive Officer is bound to follow the resolution passed by the General Body of the Janpad Panchayat,

4. Learned counsel appearing for the respondent No. 2 submits that the Chief Executive Officer is not bound or under an obligation to follow the resolution passed by the General Body of the Janpad Panchayat, if it is not in accordance with the provisions of law. Section 33 (2) of the Rules, 1999 clearly provides that the extension of service can be granted in exceptional cases with the prior permission of the prescribed authority. In the present case, it does not appear that with the prior permission by the prescribed authority, the General Body of the Janpad Panchayat passed the resolution. Thus, the resolution passed by the General Body of the Janpad Panchayat, Pandariya itself is unlawful and not liable to be followed and complied with.

4. Mr. Sushil Dubey, learned Government Advocate appearing for the respondent No. 1 submits that the law for extension of service is very clear. Rule 33 (2) of the Rules 1999 provides for extension of service in exceptional cases with the prior permission of the prescribed authority. According to him, the prescribed authority is Chief Executive Officer and the resolution passed by the General Body of the Janpad Panchayat was not with the prior permission of the prescribed authority. Thus, the resolution is unlawful.

5. I have heard learned counsel appearing for the parties and perused the documents appended thereto.

6. The contention of learned counsel appearing for the petitioner deserves to the rejected on the simple ground that the General Body of the Janpad Panchayat, while granting one year's extension, has not obtained prior permission of the prescribed authority. Learned counsel appearing for the petitioner is not in a position to submit asto who is the prescribed authority. The prescribed authority defined in Rule 3 (f) of the Rules 1999. Rule 3 (f) of the Rules 1999 provides that 'Prescribed Officer' means the officer notified by the State Government in accordance with the provisions of Sub-Section (1) of Section 70 read with clause (xxi) of Section 2 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993'). Section 70 of the Adhiniyam 1993 mentions the prescribed authority and the prescribed authority is defined in Section 2 read with clause (xxi), that 'Prescribed Officer' means such authority to whom the State Government by notification, notify during discharge of its duties.

7. The petitioner has not pointed out any provisions. Rule 34 of the Rules, 1999 provides that all the Panchayat employees shall be under the administrative control of the Panchayat, through its Chief Executive Officer. It appears that the Chief Executive Officer is the prescribed authority. Thus, the resolution dated 12.6.2003 passed by the General Body of the Janpad Panchayat was without competence and without prior permission of the prescribed authority as provided in Rule 33 (2) of the Rules, 1999.

8. As a result and for the reasons above stated, this petition is devoid of merit and it is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge